

either actual costs or a proxy and investigating significant deviations as a way to expose predatory conduct.¹¹⁰⁴ Finally, Century asserts that this question exposes a problem with competitive bidding not limited to circumstances of predation, namely that high cost compensation based on the winning (low) bidder's cost is likely to eliminate the ability of the losing companies to provide universal service and to leave their actually-incurred costs uncompensated.¹¹⁰⁵ The result, argues Century, would be to reduce competition and defeat the 1996 Act's intent to make universal service support available to multiple carriers in large and urban LEC service areas.¹¹⁰⁶

337. The Bureau asked what safeguards should be adopted to ensure service quality under a competitive bidding system.¹¹⁰⁷ Many commenters addressing this question suggest that quality standards should be part of the bidding process so that bidders would know in advance what level of quality was required and then bid accordingly.¹¹⁰⁸ Additionally, some commenters suggest that carriers be penalized, perhaps by a reduction in support, for failure to meet quality standards.¹¹⁰⁹ AT&T contends that, in those limited circumstances in which it would support competitive bidding, state commissions should verify the credentials and capabilities of bidding carriers.¹¹¹⁰ GTE asserts that the requirement in its bidding proposal that carriers comply with state imposed COLR obligations as a condition of obtaining support obviates the need for additional measures.¹¹¹¹ GTE further argues that quality of service concerns attributable to insufficient support levels are more likely to arise because of errors in cost models than when the support level is set by the carriers themselves through the bidding process.¹¹¹² ITC maintains that standards, which must be applied to all carriers, should cover installation speed, repair response, transmission quality, dialtone availability, emergency

¹¹⁰⁴ ITC further comments at 22.

¹¹⁰⁵ Century further comments at 26-27.

¹¹⁰⁶ *Id.* at 27.

¹¹⁰⁷ Public Notice at 7.

¹¹⁰⁸ *See, e.g.*, AirTouch further comments at 26; Ameritech further comments at 39; CFA further comments at 22; MCI further comments at 25.

¹¹⁰⁹ *See, e.g.*, Bell Atlantic further comments at 14; CFA further comments at 22; ITC further comments at 22; MCI further comments at 25; Time Warner further comments at 45.

¹¹¹⁰ AT&T further comments at 39.

¹¹¹¹ GTE further comments at 53-54.

¹¹¹² *Id.* at 54.

response, billing quality, and call completions (in areas where concentrators are used).¹¹¹³ Time Warner proposes that, as a condition of being certified as a winning bidder, the carrier must agree to meet the prevailing state quality of service standards.¹¹¹⁴ TCI argues that competition should reduce incentives to lower quality, but any lingering concerns can be diminished by relying on the states to establish safeguards.¹¹¹⁵ Finally, some commenters reiterate their concern that a competitive bidding system would invariably result in quality degradation.¹¹¹⁶

338. Potential collusion. The Bureau also asked how collusion could be avoided in a competitive bidding system.¹¹¹⁷ Some commenters suggest that the Commission rely on its experience in operating the spectrum auctions to devise similar protections against collusion for universal service support auctions.¹¹¹⁸ Time Warner agrees that the Commission must impose stringent penalties for collusion and that the Commission should rely on its experience with other auctions to formulate fair and efficient bidding rules.¹¹¹⁹ Consumer Federation of America argues that collusion would violate criminal statutes and should be fully prosecuted.¹¹²⁰ GTE asserts that its proposed sealed-bid, single-round auction would minimize collusion because, under such a system, there would be powerful incentives for carriers to defect from any pre-bid collusive agreement.¹¹²¹ TCI contends that the Commission set the bonus for the winning (low) bidder at a level sufficient for parties to forgo collusion.¹¹²² Ameritech contends that there is little incentive to collude. It asserts that companies would

¹¹¹³ ITC further comments at 22.

¹¹¹⁴ Time Warner further comments at 45. *See also* NCTA further comments at 16 (arguing that state quality of service standards should be applied to a system of competitive bidding).

¹¹¹⁵ TCI further comments at 33-34.

¹¹¹⁶ *See, e.g.,* RTC further comments at 28-29; RUS further comments at 52. *See also* Western Alliance further comments at 14.

¹¹¹⁷ Public Notice at 7.

¹¹¹⁸ *See, e.g.,* Bell Atlantic further comments at 14; NCTA further comments at 16; TCI further comments at 34; Western Alliance further comments at 14. *See also* MCI further comments at 25 (proposing that, as with PCS auctions, Commission must adopt rules against collusion and advise all bidders that the Commission and the Department of Justice will enforce those rules).

¹¹¹⁹ Time Warner further comments at 46.

¹¹²⁰ CFA further comments at 22.

¹¹²¹ GTE further comments at 54, Att. 1 at 22.

¹¹²² TCI further comments at 34.

not submit predatorily low bids because, if successful, the carrier would have to provide service below cost, a difficult tactic to sustain, even if the company could engage in cross-subsidization. Ameritech further argues that companies have no incentive to collude to increase support levels because all companies must contribute to universal service support mechanisms and would seek to keep the overall contribution low.¹¹²³

339. Auction structure. The Public Notice sought comment on whether the structure of the auction should differ if there are fewer bidders and, if so, how.¹¹²⁴ Most commenters that address this specific point argue that there is no reason to change the structure of the auction if there are only a few bidders.¹¹²⁵ GTE contends that its auction proposal will work even if there are only two qualified bidders and, if only one qualified bid is received, the auction would be cancelled.¹¹²⁶ Several commenters, however, do recommend changing the structure of the auction and offer some general suggestions. MCI asserts that the structure of the auction should be geared to the anticipated number of bidders, as is the case in the PCS auctions. Thus, for example, the greater the number of bidders, the fewer rounds there should be in a day, as bidders need more time to assess the information in the bids.¹¹²⁷ TCI argues that the risk of collusion increases as the number of bidders decreases and, to mitigate this risk, the Commission may need to increase the bonus payment to the winning bidder if there are only a few bidders.¹¹²⁸ Western Alliance asserts that auctions should not be held unless there is large of pool of bidders, perhaps 20, with at least five bidding in each round.¹¹²⁹ Finally, AT&T contends that the fact that there might be few bidders or only one bidder in a serving area is further indication that a bidding system is inefficient.¹¹³⁰

340. Service area. The Bureau also sought comment on how it should determine the size of the areas for which eligible carriers bid for universal service support and what would be the optimal basis for determining the size of those areas, in order to avoid giving an unfair

¹¹²³ Ameritech further comments at 39.

¹¹²⁴ Public Notice at 7.

¹¹²⁵ See, e.g., Ameritech further comments at 54; Bell Atlantic further comments at 14; ITC further comments at 23; NCTA further comments at 17; Time Warner further comments at 47. Time Warner assumes that the normal case will involve few bidders.

¹¹²⁶ GTE further comments at 45, 54.

¹¹²⁷ MCI further comments at 25.

¹¹²⁸ TCI further comments at 34.

¹¹²⁹ Western Alliance further comments at 14.

¹¹³⁰ AT&T further comments at 39.

advantage to either the incumbent LEC or competitive carriers.¹¹³¹ Commenters support using geographic areas of different size for bidding purposes. Some argue that the optimal area on which to bid should be the wire center,¹¹³² and some suggest exchange areas,¹¹³³ while others propose using CBGs¹¹³⁴ or some combination.¹¹³⁵ Ameritech argues that the size of the area should be competitively neutral and bear a reasonable relationship to the way telecommunications services are technically provided.¹¹³⁶ Ameritech contends that a wire center is the optimal serving area because it is the basis on which the network is engineered and costs incurred.¹¹³⁷ GTE argues that entrants should be able to nominate a set of CBGs as the area they wish to serve.¹¹³⁸ It contends that the use of CBGs allows bidding to establish separate support levels that would capture differences in costs among areas. It also contends that bidding on a CBG basis will facilitate entry because the requirement to serve a small area will not create an unreasonable barrier for prospective carriers of last resort.¹¹³⁹ Time Warner, on the other hand, contends that only incumbents can efficiently serve areas as small as CBGs, giving incumbents an unfair advantage if that were the size of the area used for bidding.¹¹⁴⁰ CFA contends that using smaller areas, such as CBGs, creates unrealistic market definitions and additional complexity because all network functionalities needed to provide telecommunications services for a CBG, transport and switching for example, should be

¹¹³¹ Public Notice at 7.

¹¹³² See, e.g., Ameritech further comments at 40; NCTA further comments at 17 (proposing that, although competitive bidding should take place at the wire center level, no carrier should be required to serve an entire wire center nor would any geographic restrictions on service boundaries be appropriate); Time Warner further comments at 48-49.

¹¹³³ Bell Atlantic further comments at 14; CFA further comments at 23.

¹¹³⁴ GTE further comments at 54.

¹¹³⁵ ITC further comments at 23. ITC proposes that a combination of a wire center and a community of interest within which the population shares common economic, social and political structures should be used as a starting point. If greater granularity is needed, ITC proposes using portions of an exchange or perhaps using a grid as proposed by PacTel, but notes that the smaller the area, the greater the administrative burdens. ITC further comments at 23-24.

¹¹³⁶ Ameritech further comments at 40.

¹¹³⁷ *Id.*

¹¹³⁸ GTE further comments at 54-55.

¹¹³⁹ *Id.* at 54.

¹¹⁴⁰ Time Warner further comments at 48-49.

included in the bid.¹¹⁴¹ Finally, several commenters contend that the Commission has no authority to designate service areas for competitive bidding because the 1996 Act grants that authority to the states, at least for areas not served by a rural telephone company.¹¹⁴² Some commenters reiterate their position that competitive bidding should be used only for unserved areas and that the states should identify such areas.¹¹⁴³

3. Discussion

341. We recommend that the Commission not adopt any specific competitive bidding plan at this time. While the record in this proceeding persuades us that a properly structured competitive bidding system could have significant advantages over other mechanisms used to determine the level of universal service support for high cost areas, we find that the information contained in the record does not support adoption of any particular competitive bidding proposal at this time. We recommend that the Commission, together with the state commissions, continue to explore the possibility of using competitive bidding for determining the level of federal universal support.

342. Perhaps the greatest advantage of competitive bidding is that it holds the promise of using a market-based approach to establishing the level of universal service support for any given area. A properly designed competitive bidding system would reduce the role of regulators in determining the costs of providing universal service once an area becomes subject to bidding. The support level would reflect the bidding carriers' assessment of the costs of serving the market as well as their assessment of revenues, including current and future follow-on net revenues, which may well be harder for regulators to assess than costs. Such assessments would be well-suited to capture the effect of new technologies on service costs. In addition, these assessments could reflect many more factors, such as regulatory burdens or market opportunities, than can be incorporated into a cost model. We thus concur with those commenters that argue that competitive bidding comports with the intent of the 1996 Act to rely on market forces and to minimize regulation.¹¹⁴⁴ Moreover, as stated by one of the commenters, competitive bidding would put all prospective eligible carriers on an equal footing.¹¹⁴⁵

¹¹⁴¹ CFA further comments at 23.

¹¹⁴² *See, e.g.*, Century further comments at 28; NECA further comments at 31; RTC further comments at 29.

¹¹⁴³ *See, e.g.*, AT&T further comments at 39-40; MCI further comments at 25-26 (proposing that bidding should be used only for areas that no carrier will serve at the level of support established through a proxy model; auction areas should be no smaller than CBGs).

¹¹⁴⁴ *See, e.g.*, GTE comments at 11; CSE Foundation reply comments at 6.

¹¹⁴⁵ Comnet Cellular reply comments at 6.

343. Another potential advantage of a properly structured competitive bidding system is that it could reduce the amount of overall support needed for universal service. Competitive bidding should encourage more efficient carriers to submit bids that reflect their lower costs. The bids reflecting the lower costs of the more efficient carriers would be used to set the level of universal service support for the entire service area. Additionally, competitive bidding would convert the efficiency gains from new technologies or improved productivity into cost savings for universal service.

344. Whether these and other potential advantages of competitive bidding can be realized will depend, of course, on the structure of the competitive bidding process. Commenters proposed both a broad use of competitive bidding to set support levels for areas subject to competition¹¹⁴⁶ and a more limited use of competitive bidding to select carriers for areas that are currently unserved or in which no carrier, not even the incumbent, would serve at the established support levels.¹¹⁴⁷ With regard to the latter proposal, competitive bidding could be viewed as a market-based mechanism to correct for potential errors arising from reliance on a proxy cost model to set support levels. We do not agree, however, that a carrier should be automatically allowed to withdraw service solely on the basis of how the support level is established.

345. We find that sections 254 and 214(e) and the record developed in this proceeding provide some guidance about how competitive bidding should be structured. We recommend that any competitive bidding system be competitively neutral and not favor either the incumbent or new entrants. Any carrier that meets the eligibility criteria for universal service support should be permitted to participate in the auction. Any competitive bidding proposal must be consistent with the goals and requirements of the 1996 Act, including that universal service support be "specific, predictable and sufficient."¹¹⁴⁸ Any competitive bidding system adopted should minimize the ability of bidders to collude. Various commenters, for example, urge the Commission to establish and enforce stiff penalties against collusion,¹¹⁴⁹ while others suggest that the Commission rely on its experience with spectrum auctions to devise protections against collusion.¹¹⁵⁰ We recommend that any final competitive system be designed to minimize the incentives to collude and that any colluding carrier be subject to stiff penalties.

¹¹⁴⁶ See, e.g., GTE comments at 10-11; Time Warner comments at 10.

¹¹⁴⁷ See, e.g., California PUC comments at 13-14; USTA comments at 20; AT&T further comments at 37; MCI further comments at 21-22.

¹¹⁴⁸ See 47 U.S.C. § 254(d).

¹¹⁴⁹ See, e.g., CFA further comments at 22; Time Warner further comments at 46.

¹¹⁵⁰ See, e.g., Bell Atlantic further comments at 14; NCTA further comments at 16.

346. Various commenters contend that service quality standards should be built into the competitive bidding process.¹¹⁵¹ We conclude that the question of quality standards is not unique to competitive bidding. We have stated above that competition will give carriers the incentive to provide quality service. Moreover, we have recommended that the Commission monitor service quality by relying upon service quality data collected at the state level.¹¹⁵² To the extent that the definition of core services incorporates any standards for the provision of such services, carriers must comply with such standards in order to be eligible for universal service support and to participate in any auction process.

347. There is little support in the record for changing the structure of the bidding process in the event that there are few bidders. A few commenters, however, raise the issue of how many bidders would be required to have an effective auction.¹¹⁵³ GTE contends that its bidding system would be effective even with only two bidders.¹¹⁵⁴ We recommend that any final competitive bidding proposal should either specify the minimum number of bidders required for the auction to be effective, or be designed to be effective for any number of bidders. Finally, we recommend that, in determining the geographic area on which carriers would be bidding, any final proposed bidding plan use areas sized to promote competition and target universal service support efficiently.

348. We find that GTE's proposal poses serious questions that warrant further inquiry. These questions would be applicable to any proposed competitive bidding plan. For example, should only those carriers willing to accept carrier of last resort obligations in addition to those obligations contained in section 214(e) be permitted to bid, as proposed by GTE? Should all bidding carriers be eligible for universal service support? Some commenters argue that any bidding plan that excludes carriers may be inconsistent with section 214(e).¹¹⁵⁵ Finally, GTE's proposal assumes that carriers may designate the geographic areas, based on aggregating CBGs, that they wish to serve. This aspect of GTE's proposal raises the issue of whether bidders may designate areas for auction that differ from

¹¹⁵¹ See, e.g., AirTouch further comments at 26; Ameritech further comments at 39; CFA further comments at 22; MCI further comments at 25.

¹¹⁵² See *supra* Section IV.

¹¹⁵³ See e.g., Western Alliance further comments at 14 (arguing that auctions should not be held unless there are large number of bidders).

¹¹⁵⁴ GTE further comments at 45, 54.

¹¹⁵⁵ See, e.g., Florida PSC comments at 11-12. Florida PSC also concludes that this issue need not be resolved at this time.

the service areas designated by the states pursuant to section 214(e)(5).¹¹⁵⁶ We emphasize that we have reached no conclusions and make no recommendations concerning these issues but cite them because they highlight the need for further inquiry and investigation.

349. We recommend that the Commission continue to investigate how to structure a fair and effective competitive bidding system.¹¹⁵⁷ GTE is the only commenter to propose a detailed competitive bidding plan in this proceeding, and it amended its proposal during the course of this proceeding. Its most recent proposal was submitted as part of its response to the further questions posed by the Common Carrier Bureau's Public Notice and has not been subject to further public comment. Even this proposal was characterized by GTE as an outline rather than a final, fixed proposal.¹¹⁵⁸

E. High Cost Transition

1. Background

350. Section 254(b) requires the Joint Board to recommend a specific timetable for the completion of its recommended decision.¹¹⁵⁹ In the NPRM, the Commission requested comment on whether there should be a transition period from the existing universal service fund to the new mechanism established in this proceeding. A transition would allow carriers that are receiving funding through the existing mechanisms an opportunity to adjust to the requirements of the 1996 Act and rules adopted in this proceeding.¹¹⁶⁰

351. The NPRM also sought comment on whether the interim cap on the growth of the existing universal service fund should be extended until the completion of this proceeding.¹¹⁶¹ The cap was due to expire on July 1, 1996. This Joint Board issued a Recommended Decision on June 19, 1996, recommending that the cap be extended until the new universal service rules adopted in this proceeding become effective.¹¹⁶² The Commission

¹¹⁵⁶ See, e.g., Century further comments at 28.

¹¹⁵⁷ See, e.g., PacTel further comments at 44. See also California PUC comments at 12; Florida PSC comments at 11-12; GSA reply comments at 13.

¹¹⁵⁸ GTE further comments, Att. 1 at 1.

¹¹⁵⁹ 47 U.S.C. § 254(a)(1).

¹¹⁶⁰ NPRM at para. 40.

¹¹⁶¹ *Id.*

¹¹⁶² Federal-State Joint Board on Universal Service, *Recommended Decision*, FCC 96J-1 (rel. June 19, 1996).

agreed with our recommendation, and on June 26, 1996, amended its rules to extend the cap until the rules adopted in this proceeding become effective.¹¹⁶³

2. Comments

352. Many commenters argue that there needs to be some transition period before the new universal service support mechanism takes full effect. Some commenters argue that if carriers currently receiving subsidies lose that support abruptly, then rate shock will result.¹¹⁶⁴ Small and rural carriers are especially worried about the potential impact of any changes to the support mechanisms on their local service rates.¹¹⁶⁵ Alaska PUC argues that any changes should be implemented for large carriers before they are applied to small carriers.¹¹⁶⁶ NARUC notes that there have been several NARUC resolutions that expressly contemplate a transition period to any new universal service support mechanisms.¹¹⁶⁷

353. The parties have different views on how long any transition should last. The Idaho PSC argues that a short transition is appropriate.¹¹⁶⁸ GVNW, Oregon PUC, and Iowa Tel. Ass'n state that a transition period should last several years.¹¹⁶⁹ USTA proposes that its plan be phased in over four years.¹¹⁷⁰ Montana Tel. Ass'n states that the transition period should be at least five years.¹¹⁷¹ United Utilities suggests a ten year transition.¹¹⁷² Alaska Tel. and Western Alliance argue that a transition should be long enough to allow carriers to fully recover the embedded costs of their existing facilities.¹¹⁷³ CPI proposes the use of three

¹¹⁶³ Federal-State Board on Universal Service, *Report and Order*, FCC 96-281 (rel. June 26, 1996).

¹¹⁶⁴ See, e.g., Montana PSC comments at 3; Telec Consulting comments at 13; Washington UTC comments at 12; Wisconsin PSC reply comments at 7.

¹¹⁶⁵ See OITA-WITA comments at 14; Dell Tel. reply comments at 6-7. See also Colorado PUC comments at 8.

¹¹⁶⁶ Alaska PUC comments at 16-17.

¹¹⁶⁷ NARUC comments at 11.

¹¹⁶⁸ Idaho PSC comments at 10.

¹¹⁶⁹ GNVW comments at 14; Iowa Tel. Ass'n. comments at 3; Oregon PUC comments at 6-7.

¹¹⁷⁰ USTA comments at 18.

¹¹⁷¹ Montana Tel. Ass'n comments at 8.

¹¹⁷² United Utilities reply comments at 10.

¹¹⁷³ Western Alliance comments at 10; Alaska Tel. reply comments at 6.

groupings of carriers for any transition process. Large carriers, those with over 2 percent of the nation's access lines, would move to a TSLRIC approach immediately. The smallest LECs would continue to use embedded costs for one year, and then be transitioned to TSLRIC over seven years. Medium-size carriers, those with less than 2 percent of the nation's access lines, would have a four year transition to a TSLRIC approach.¹¹⁷⁴

354. Several commenters disagree, however, and assert that no transition period is needed.¹¹⁷⁵ MCI argues that the new support mechanisms should be instituted without delay. It claims that the reduction in subsidy burden will lead to an immediate reduction in rates to consumers.¹¹⁷⁶ AT&T contends that there will be no significant rate shock since existing local service rates in most areas are already compensatory. In addition, AT&T argues that a long transition period, such as the four years proposed by USTA, would be inconsistent with the 1996 Act since it would maintain implicit subsidies of the current support mechanisms.¹¹⁷⁷ Some argue that some of the changes, but not necessarily all, should be done immediately. For example, Ameritech argues that DEM weighting should be eliminated immediately, but that a transition period may be necessary for other changes.¹¹⁷⁸

3. Discussion

355. The Joint Board recommends that the new universal service support mechanism for rural, insular, and high cost areas that we have set out in this section of the Recommended Decision take effect beginning January 1, 1998. The current universal service support mechanisms operate on a calendar year, and January 1, 1998 will be the beginning of the first calendar year after the Commission adopts rules establishing the new support mechanisms.¹¹⁷⁹ Starting at that date, carriers other than rural telephone companies would begin to receive support based upon the proxy model. Rural telephone companies would not immediately use a proxy model to determine their costs, but would have their support based on the per line support those carriers received from the high cost assistance, DEM weighting, and LTS mechanisms for a twelve month period prior to 1998.

¹¹⁷⁴ CPI *ex parte* at 5-6 (Oct. 4, 1996).

¹¹⁷⁵ See, e.g., Cincinnati Bell comments at 10; CompTel reply comments at 14; WinStar reply comments at 5.

¹¹⁷⁶ MCI comments at 13.

¹¹⁷⁷ AT&T reply comments at 11.

¹¹⁷⁸ Ameritech comments at 12-13.

¹¹⁷⁹ Under section 254(a)(2), the Commission has fifteen months from the date of enactment (on or before May 8, 1997) to implement the recommendations of this Joint Board. 47 U.S.C. § 254(a)(2).

356. The changes that we recommend to the universal service support mechanisms may lead to changes in the support levels currently received by some carriers. We find that a short transition period will expedite achieving the requirements of the 1996 Act, with minimal adverse impact on carriers. The recommended changes to the system will likely not have an adverse impact on the non-rural carriers or require any rate restructuring because non-rural carriers generally do not receive a significant portion of their revenues from the universal service support mechanisms. Consequently, we believe it is appropriate to move non-rural carriers to a proxy model first. We agree with the commenters that argue that there should be a transition for small, rural carriers.¹¹⁸⁰ Therefore we have recommended that rural carriers continue to use embedded costs for three years after the non-rural companies begin to use proxy models. During that period, carriers would receive a payment based on the support they received from the high cost assistance, DEM weighting, and LTS mechanisms for a twelve-month period prior to 1998. The payments to the rural carriers may vary if the numbers of lines they serve change, but the payment level per line would remain constant. At the end of that period, rural carriers will then shift to proxy models for calculating their draw from universal service funds for providing designated services to customers in rural, insular, and high cost areas over three additional years.¹¹⁸¹ This will allow rural carriers time to adjust to the new system and to minimize any possible rate shock to their customers. In addition, due to the unusual nature of providing service in Alaska and the insular areas, we are not requiring rural companies serving those areas to transition to a proxy model, subject to later review.

VIII. SUPPORT FOR LOW-INCOME CONSUMERS

A. Overview

357. The 1996 Act states that low-income consumers should have access to telecommunications services at rates that are just, reasonable, and affordable, and comparable to rates charged in urban areas.¹¹⁸² Section 254(i) requires that rates for universal service be "just, reasonable, and affordable." Since 1985, the Commission has, pursuant to its general authority under Titles I and II of the 1934 Act, and in cooperation with state regulators and local telephone companies, administered two programs designed to increase subscribership by assisting low-income consumers. The Commission's Lifeline Assistance program ("Lifeline")

¹¹⁸⁰ See, e.g., Alaska PUC comments at 16-17; Colorado PUC comments at 8; Dell Tel. reply comments at 6-7.

¹¹⁸¹ The rural companies will have the option to voluntarily change to the proxy model system before the end of the five-year period.

¹¹⁸² 47 U.S.C. § 254(b)(3).

reduces qualifying consumers' monthly charges by waiving all or part of the federal SLC and requires a matching reduction in state rates. The Lifeline Connection Assistance program ("Link Up") provides federal support to reduce qualifying consumers' initial connection charges by up to one half. Currently, the cost of both programs is recovered from IXC's with at least .05 percent of presubscribed lines. Section 254(j) provides that "[n]othing in [section 254] shall affect the collection, distribution, or administration of the Lifeline Assistance Program provided for by the Commission."¹¹⁸³

358. In this section, we consider low-income universal service support in light of the 1996 Act. Pursuant to sections 254(a), (b)(1) and (b)(3), we first discuss what telecommunications services and rules should be supported for low-income consumers. Next, we consider the extent to which the Joint Board should recommend that the Commission modify its current programs to comply more fully with Congress's mandate to provide low-income universal service support "in all regions of the Nation" and through explicit, competitively-neutral support mechanisms. We therefore recommend that the Lifeline and Link Up programs be modified to make them competitively neutral and to ensure their availability to low-income consumers in all regions of the nation.

B. Services to be Supported for Low-Income Consumers

1. Background

359. In the NPRM, the Commission sought comment on what services should be supported for low-income consumers, and referred these issues to the Joint Board. The Commission proposed a number of services to receive federal universal support in rural, insular, and high cost areas.¹¹⁸⁴ The Commission also proposed that these same services be supported with respect to low-income consumers.¹¹⁸⁵ The services identified in the NPRM were: (1) voice-grade access to the public switched network, with the ability to place and receive calls; (2) touch-tone; (3) single-party service; (4) access to emergency services; and (5) access to operator services. The Commission also sought comment on whether additional services such as access to interexchange services and directory assistance should receive universal service support,¹¹⁸⁶ and whether these services should be available to and supported for low-income consumers.¹¹⁸⁷ The Commission also sought comment on what additional

¹¹⁸³ 47 U.S.C. § 254(j).

¹¹⁸⁴ NPRM at para. 15.

¹¹⁸⁵ NPRM at para. 50.

¹¹⁸⁶ NPRM at para. 23.

¹¹⁸⁷ NPRM at para. 50.

services, if any, meeting one or more of the criteria enumerated in section 254(c)(1), would be particularly appropriate for low-income consumers.¹¹⁸⁸

360. In the NPRM, the Commission also sought comment on whether toll-limitation services and reduced service deposits should be supported for low-income consumers.¹¹⁸⁹ As the Commission noted in the NPRM, toll-limitation services include both toll blocking, which prevents the placement of long distance calls for which the subscribers would be charged, and toll-control services, which limit the toll charges subscribers can incur during a billing period.¹¹⁹⁰ Based on studies indicating that disconnection for nonpayment of toll charges is a significant barrier to universal service, the Commission observed that toll blocking and toll limitation might significantly affect subscribership.¹¹⁹¹ The Commission also recognized the potential tension between providing consumers with the ability to receive toll-limitation services and the principle set forth in the 1996 Act that consumers should possess access to "telecommunications and information services, including interexchange services."¹¹⁹² As the Commission observed in the NPRM, recent studies indicate that, in addition to disconnection for non-payment of toll charges, the high deposits carriers charge as a condition for re-establishing service may be more significant barriers to universal service than the cost of local service itself.¹¹⁹³ The NPRM noted that the Commission's Subscribership Notice suggested that LECs generally require deposits before connecting or reconnecting subscribers, which presents a formidable obstacle to initiating service for low-income individuals.¹¹⁹⁴ In the NPRM, the Commission sought comment on whether toll-limitation services and reduced service deposits meet the criteria enumerated in section 254(c)(1).¹¹⁹⁵

361. In addition, the Commission noted in the NPRM that there may be several ways to advance the statutory principle set forth in section 254(b)(3) to ensure that "low-income consumers . . . have access to . . . interexchange services."¹¹⁹⁶ In particular, the

¹¹⁸⁸ NPRM at para. 50.

¹¹⁸⁹ NPRM at para. 54, 56.

¹¹⁹⁰ NPRM at para. 54.

¹¹⁹¹ NPRM at para. 56.

¹¹⁹² NPRM at para. 54 n.120 (*citing* 47 U.S.C. § 254(b)(3)).

¹¹⁹³ NPRM at para. 56 (*citing* *Subscribership Notice* at 13003-06).

¹¹⁹⁴ NPRM at para. 56 (*citing* *Subscribership Notice* at 13003-05).

¹¹⁹⁵ NPRM at paras. 54, 56 (*citing* 47 U.S.C. § 254(c)(1)).

¹¹⁹⁶ NPRM at para. 55 (*citing* 47 U.S.C. § 254(b)(3)).

Commission solicited comment on whether and how it should encourage domestic IXC's to provide optional calling plans for low-income consumers to promote the statutory principles enumerated in section 254(b)(3). Additionally, the Commission sought comment on the potential impact of such plans on subscribership to telecommunications services.¹¹⁹⁷

362. The Commission asked whether free access to information about telephone service for low-income consumers should be included in the group of services receiving universal service support.¹¹⁹⁸ Such free telephone access primarily would benefit measured-rate subscribers who are charged for each local call on either a per-minute or per-call basis. Additionally, the Commission suggested that Lifeline and Link Up customers could benefit significantly from free access to information regarding those programs.¹¹⁹⁹

363. Because consumers' access to certain basic information regarding their telephone service may be a prerequisite to maintaining service, the NPRM also sought comment on whether, like access to the loop itself, access to telephone service information is essential to public health and safety and is otherwise consistent with the public interest, convenience, and necessity.¹²⁰⁰ The types of information that the Commission suggested might fall into this category include information regarding service activation and termination, repairs, and low-income support programs.¹²⁰¹

364. In the past, the Commission's universal service policies have focused on the rates charged for traditional residential service. Nevertheless, the Commission recognized in the NPRM that people who move frequently or have no residence, such as seasonal workers and homeless individuals, do not have ready access to residential service. Therefore, the Commission sought comment on specific services that would enable such low-income individuals to gain access to the telecommunications network.¹²⁰² The NPRM offered several examples of such services, including community phone banks, community access centers, special discounted service plans for short-term subscribers, and support for voice mail services.¹²⁰³ The Commission asked parties to address the potential for wireless carriers to

¹¹⁹⁷ NPRM at para 55.

¹¹⁹⁸ NPRM at para. 52 (*citing* 47 U.S.C. § 254(i)).

¹¹⁹⁹ NPRM at para. 52.

¹²⁰⁰ NPRM at para. 53 (*citing* 47 U.S.C. § 254(c)(1)(A),(D)).

¹²⁰¹ NPRM at para. 53.

¹²⁰² NPRM at para. 57.

¹²⁰³ NPRM at para. 57 n. 128.

provide services to highly mobile groups.¹²⁰⁴ Finally, the Commission sought comment on whether the suggested services meet the criteria set forth in section 254(c)(1)(A)-(D), so as to be eligible for inclusion in the list of supported services.¹²⁰⁵

2. Comments

365. Designated Services. Nearly every commenter agrees that low-income consumers should receive, at a minimum, the same services designated for universal service support for other subscribers.¹²⁰⁶ Georgia PSC, for example, recommends limiting supported services for low-income consumers to those supported in rural and high cost areas.¹²⁰⁷ Nat'l Black Caucus, which stated that it was pleased that the NPRM recognized that the services supported for rural, insular, and high cost areas should also be supported for low-income consumers, notes that these groups are not mutually exclusive, because certain urban areas are also high cost areas.¹²⁰⁸ Similarly, Edgemont maintains that under-served inner city neighborhoods must receive access and affordable rates in a manner comparable to the receipt of such access and rates in rural and insular areas.¹²⁰⁹

366. Less Than Designated Services. Other commenters suggest supporting fewer services for low-income consumers than are designated for other subscribers. Georgia PSC opposes providing universal service support for access to operator services for low-income people.¹²¹⁰ Michigan PSC suggests a special low-income local service package with low prices and very limited features, including toll restriction and limited local calling plus free calls to schools and medical and emergency services.¹²¹¹

367. State-Determined Services. Some commenters recommend against providing federal universal service support for any new services, including the designated services,

¹²⁰⁴ NPRM at para. 57.

¹²⁰⁵ NPRM at para. 57.

¹²⁰⁶ See, e.g., CNMI comments at 19-20; Florida PSC comments at 14-15; Georgia PSC comments at 8-11; ITA/EMA comments at ii, 4; Michigan Consumer Federation comments at 20.

¹²⁰⁷ Georgia PSC comments at 8.

¹²⁰⁸ Nat'l Black Caucus comments at 7-9.

¹²⁰⁹ Edgemont reply comments at 6.

¹²¹⁰ Georgia PSC comments at 7-8.

¹²¹¹ Michigan PSC comments at 2.

targeted to low-income consumers.¹²¹² Cincinnati Bell claims that state commissions and local authorities should fund services for low-income consumers because they are best suited to develop responses to specific populations.¹²¹³ Additionally, NARUC, TCI, and PacTel argue that states must be permitted to continue developing and redefining the universal service policies that best meet the needs of subscribers in their jurisdictions, as long as they do not conflict with federal statutory mandates.¹²¹⁴ Washington UTC contends that a special definition of universal service for low-income consumers that identifies individual services will confine universal service policy to today's technology and services and claims that such a definition is inconsistent with competitive neutrality.¹²¹⁵

368. Toll-Limitation Services. Some parties argue that toll limitation¹²¹⁶ helps subscribers maintain access to telecommunications services by helping them control their expenditures.¹²¹⁷ These commenters point to studies showing that the main reason subscribers lose their telephone service is excessive toll bills.¹²¹⁸ A large majority of commenters addressing the issue of toll limitation or toll blocking agree that support should be provided for these services in some form, with commenters fairly evenly divided between those advocating it as a service that should be available to all consumers,¹²¹⁹ and those advocating it

¹²¹² See, e.g., Cincinnati Bell comments at 7; NARUC comments at 7; PacTel comments at 23; TCI comments at 17-18; Washington UTC comments at 13. See also Texas OPUC comments at 12-13 (stating that the proposals in the NPRM will increase rates, resulting in the need for additional low-income support programs).

¹²¹³ Cincinnati Bell comments at 7.

¹²¹⁴ NARUC comments at 7; PacTel comments at 23; TCI comments at 17-18.

¹²¹⁵ Washington UTC comments at 7, 13.

¹²¹⁶ As the Commission noted in the NPRM, toll-limitation services include both toll-blocking services, which prevent toll calls billed to the subscriber's telephone number, and toll-control services, which allow subscribers to preset toll spending limits during a given billing period. NPRM at para. 54. We observe that toll blocking is a form of toll limitation. We will refer to both services generically as "toll limitation," or to each respective service by name, as relevant.

¹²¹⁷ See, e.g., Bell Atlantic comments at 15 (suggesting making toll limitation available to all consumers, and subsidizing it for low-income consumers); California PUC comments at 15; Florida PSC comments at 15-16; Illinois CC comments at 5; Indiana URC comments at 3-4.

¹²¹⁸ See, e.g., Benton comments at 2; California PUC comments at 15; Illinois CC comments at 5; Indiana URC comments at 3-4; Missouri PSC comments at 13; OPC-DC comments at 12-13; Rural Iowa Indep. Tel. Ass'n comments at 5.

¹²¹⁹ See, e.g., Alaska PUC comments at 2, 6; Benton comments at 2-3; Georgia PSC comments at 8 (supporting toll blocking/limitation as designated service, but not mandatory); Indiana URC comments at 2-4.

as a service to be supported for low-income users only.¹²²⁰ Edgemont asserts that toll-limitation services should be offered to low-income subscribers without charge and on a voluntary basis, so as not to frustrate the purpose of the 1996 Act by cutting off access to interexchange services.¹²²¹ Iowa Utilities Board, noting that toll blocking often restricts access to operator assistance, states that the Commission should draft rules so that, if access to operator services is made a designated service, it does not preclude low-income customers from choosing toll-blocking services.¹²²² Benton proposes a service program with three options under which customers are guaranteed incoming calls and access to emergency numbers even when there has been failure to pay tolls.¹²²³ With respect to involuntary toll limitation, NARUC maintains that if involuntary toll blocking is instituted for non-payment, it should be limited to the unpaid service or unpaid provider, if possible.¹²²⁴

369. CompTel argues that offering toll limitation to low-income consumers could result in increased universal service costs.¹²²⁵ BellSouth maintains that such services fall short of the compelling public interest test that would justify their inclusion in universal service, and are not widely subscribed to by residential customers nor essential to education, public health or safety.¹²²⁶ GTE says toll limitation should not be a mandatory component of service for low-income customers because not all such customers want or need toll limitation.¹²²⁷ Time Warner supports universal service support for voluntary toll blocking but not toll limitation. Time Warner argues that toll limitation is more expensive to provide, more difficult to administer, and the ability to offer such services may vary according to switching technology and billing systems.¹²²⁸ Georgia PSC favors toll blocking or limitation, but believes that these services should not be services designated for universal service support

¹²²⁰ See, e.g., CNMI comments at 19-20; California Dept. of Consumer Affairs comments at 23; California PUC comments at 15; New Jersey BPU comments at 2; Oregon PUC comments at 5; Rural Iowa Indep. Tel. Ass'n comments at 5.

¹²²¹ Edgemont comments at 17.

¹²²² Iowa Utilities Board comments at 5.

¹²²³ Benton reply comments at 12-14.

¹²²⁴ NARUC comments at 8.

¹²²⁵ CompTel comments at 17-18.

¹²²⁶ BellSouth comments at 12 n. 22.

¹²²⁷ GTE comments at 22-23.

¹²²⁸ Time Warner comments at 13.

because competitive forces will assure their availability.¹²²⁹ Pennsylvania PUC, New York DPS, and NARUC maintain that state public utility commissions should decide whether to offer such services.¹²³⁰

370. Reduced Service Deposits. Commenters assert that service deposits constitute a barrier to service for low-income consumers because many low-income consumers cannot afford to pay the service deposits charged by carriers to initiate service, particularly to reinstate service disconnected for non-payment.¹²³¹ Thus, some commenters suggest providing universal service support to reduce or eliminate service deposits.¹²³² Florida PSC suggests letting consumers pre-set their spending limit for toll usage in exchange for a reduced or eliminated deposit, and argues that this would provide an incentive for service providers to make toll limitation available.¹²³³ Other commenters also recommend linking reduced service deposits to voluntary toll limitation and blocking, with companies providing reduced service deposits to those customers who accept toll limitation.¹²³⁴ CompTel opposes any reduced service deposits, suggesting that they "would add unknown costs to universal service with unproven results," work against the public interest, and cause higher overall rates.¹²³⁵ GTE argues that if service deposits are reduced or eliminated, LECs should be reimbursed for such reduction because universal service support should be explicit, as required by section 254(e).¹²³⁶ Noting that many states already offer such plans, Pennsylvania PUC, NARUC, and New York DPS also oppose the Commission's mandating reduced service deposits.¹²³⁷

371. Access to Telephone Service Information at No Charge. Offering low-income consumers free access to information about telephone service (such as service activation and termination and low-income support programs) is favored by many commenters as a service

¹²²⁹ Georgia PSC comments at 8-9. *See also* Sprint comments at 21.

¹²³⁰ NARUC comments at 8; New York DPS comments at 13-14; Pennsylvania PUC comments at 22.

¹²³¹ *See, e.g.,* Edgemont comments at 17; OPC-DC comments at 12-13; Virginia CC comments at 4.

¹²³² *See, e.g.,* AT&T comments at 13 n.16; California Dept. of Consumer Affairs comments at 20-21; Michigan Consumer Federation comments at 20-22; Virginia CC comments at 4.

¹²³³ Florida PSC comments at 15-16.

¹²³⁴ *See, e.g.,* CNMI comments at 19-20; Georgia PSC comments at 8.

¹²³⁵ CompTel comments at 17-19.

¹²³⁶ GTE comments at 23.

¹²³⁷ NARUC comments at 5-8; New York DPS comments at 13-14; Pennsylvania PUC comments at 22.

deserving universal service support.¹²³⁸ These commenters appear to be concerned that low-income consumers will be unable to place calls to gain telephone service information if the calls would otherwise be an in-region toll call, or, more commonly, if the state's Lifeline program allows only a limited number of free calls. Commenters maintain that access to the LEC's (both ILECs and CLECs) customer service center is important to the public health and safety and is in the public interest.¹²³⁹ NCTA recommends providing free access to information for certified low-income consumers only.¹²⁴⁰ No state directly opposes free access to information, but Georgia PSC and Washington UTC assert that no new programs are needed.¹²⁴¹ NAD advocates that, because many information numbers are not accessible directly to TTYs (a typewriter-style device for communicating alphanumeric information over telecommunications networks), TTY users must use relay services for access to such numbers; therefore, relay users should not be charged for relay calls to numbers providing LEC service information.¹²⁴² NYNEX, Frontier, and GTE, however, do not favor universal service support for service calls. These carriers assert that support for this service is unnecessary and contrary to Congress's deregulatory intent, and the decision to make such support available is better left to states' discretion.¹²⁴³

372. No Disconnection for Non-payment of Toll. Several commenters advocate prohibiting disconnection of local service for non-payment of toll charges.¹²⁴⁴ Based on analysis of Census Bureau data from 1994, NTIA concludes that telephone subscribership appears to be consistently higher in states with a policy of no disconnection for non-payment of toll charges.¹²⁴⁵ NTIA further maintains that low-income consumers benefit the most from

¹²³⁸ See, e.g., CNMI comments at 19-20; Edgemont comments at 11-12; Florida PSC comments at 14-15; Indiana URC comments at 3-4; Michigan Consumer Federation comments at 20-21; Missouri PSC comments at 12-13; NARUC comments at 8; NCTA comments at 13; New Jersey Advocate comments at 18; New Mexico AG comments at 4; North Dakota PSC comments at 2; OPC-DC comments at 9; Ohio Consumers' Council comments at 16-17; PacTel comments at 22.

¹²³⁹ See, e.g., Louisiana PSC comments at 3.

¹²⁴⁰ NCTA comments at 13-14.

¹²⁴¹ Georgia PSC comments at 4-5; Washington UTC comments at 4-5.

¹²⁴² NAD reply comments at 22-23.

¹²⁴³ Frontier comments at 5-6; GTE comments at 22-24; NYNEX comments at 17.

¹²⁴⁴ See, e.g., AARP comments at 22-23; NASUCA comments at 6; NTIA reply comments at 10-17.

¹²⁴⁵ NTIA reply comments at 10-17.

a policy of no disconnection for non-payment of toll charges. OPC-DC¹²⁴⁶ maintains that disconnection of local service for non-payment of toll charges runs afoul of the four criteria in section 254(c)(1).¹²⁴⁷ It asserts that households with young children, elderly residents, and handicapped individuals are in need of access to basic telephone service.¹²⁴⁸ Therefore, it favors a policy prohibiting disconnection for non-payment of toll.¹²⁴⁹ Sprint, PacTel, and CompTel, however, oppose no disconnection for non-payment of toll.¹²⁵⁰ Sprint contends that competitors will strive to meet the needs of the marketplace and will respond by developing programs to encourage customers to use their services.¹²⁵¹ Sprint argues that telecommunications service providers have an inherent incentive to keep customers on the network, and that this incentive will increase as competition develops in the local exchange marketplace.¹²⁵²

373. Other Services. The Governor of Guam and New Mexico AG, among others, advocate supporting interexchange and advanced services for low-income subscribers.¹²⁵³ The Governor of Guam notes that while low-income consumers in Guam may receive access to interexchange services that are reasonably comparable to services provided elsewhere, they may not be affordable; thus, universal service support should be provided for affordable interexchange and advanced services for low-income individuals.¹²⁵⁴

¹²⁴⁶ OPC-DC comments at 2-6.

¹²⁴⁷ Those criteria are "the extent to which such telecommunications are essential to education, public health or public safety; have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers; are being deployed in public telecommunications networks by telecommunications carriers; and are consistent with the public interest, convenience, and necessity."

¹²⁴⁸ OPC-DC comments at 4.

¹²⁴⁹ OPC-DC comments at 6.

¹²⁵⁰ CompTel comments at 18; PacTel comments at 22; Sprint comments at 21-22.

¹²⁵¹ Sprint comments at 21-22.

¹²⁵² Sprint comments at 21-22.

¹²⁵³ Governor of Guam comments at 12-13; New Mexico AG comments at 4. *See also* Alaska comments at 5-6 (noting that because of difficult topographic and climatologic conditions, a sparse population, and low incomes, penetration would be extremely low if not for programs promoting universal service); CNMI comments at 9-11 (noting that the mixed domestic/international treatment afforded CNMI ratepayers results in very high telecommunications rates being imposed on subscribers whose income levels rank among the lowest in the nation); Guam Tel. Authority comments at 7.

¹²⁵⁴ Governor of Guam comments at 13.

374. Several commenters support subsidizing special-needs equipment for low-income people with disabilities (such as speech, hearing, mobility, and cognitive disabilities).¹²⁵⁵ New York DPS submits that disabled people are often poor, and while they may qualify for Lifeline service,¹²⁵⁶ they may be unable to purchase the equipment to access the network.¹²⁵⁷ NENA maintains that 911, E911, and DTMF should receive universal service support in areas where state and local authorities have previously approved the emergency service system.¹²⁵⁸ National Telecommuting Institute proposes that employers that hire low-income, homebound individuals with disabilities should receive a waiver for all voice and data line charges incurred between the employee and the company, with the service provider receiving support from universal service support mechanisms.¹²⁵⁹

375. NTIA advocates universal service support to enable low-income individuals to receive caller ID at a reduced rate in addition to the designated services.¹²⁶⁰ At least one commenter, Benton, maintains that the pro-competitive spirit of the 1996 Act, which will result in multiple services and facilities offered to consumers, requires that low-income consumers be allowed to choose which services meet their needs and are entitled to support.¹²⁶¹ For example, Benton notes that voice telephony is useless to deaf consumers.¹²⁶² Consistent with the 1996 Act's requirement that funding mechanisms be predictable, Benton suggests that the Commission set an allowance or some other mechanism under which a user could choose from an array of services.¹²⁶³

¹²⁵⁵ See, e.g., Michigan PSC comments at 2; New York DPS comments at 15; Council of Organizational Representatives reply comments at 3; NAD reply comments at 8; United Cerebral Palsy Ass'n reply comments at 2.

¹²⁵⁶ For a description of the federal Lifeline program, see section VIII. C., *infra*.

¹²⁵⁷ New York DPS comments at 15.

¹²⁵⁸ NENA reply comments at 1 (arguing that any costs incurred by carriers in providing E911 access should be eligible for support unless it would result in double recovery).

¹²⁵⁹ Letter from M.J. Willard, Ed.D., Executive Director, National Telecommuting Institute, Inc., and the President's Committee on Employment of People with Disabilities, to William F. Caton, Acting Secretary, FCC (National Telecommuting Institute, Inc. *Ex Parte*) (also recommending that if training is necessary to prepare a homebound individual for a telecommuting position, the cost of connecting the trainee to the trainer via telephone lines be covered by universal service support mechanisms).

¹²⁶⁰ NTIA reply comments at 7.

¹²⁶¹ Benton comments at 3.

¹²⁶² Benton comments at 3.

¹²⁶³ Benton comments at 3.

376. Edgemont, PacTel, Ohio Consumers' Council, and Montana Indep. Telecom. recommend a "soft dial tone" or "warm line," which enables an otherwise disconnected phone line to be used to contact emergency services (911), as well as the provider's central business office.¹²⁶⁴ Access to emergency services, commenters assert, is essential to public health and safety.¹²⁶⁵

377. Texas OPUC advocates providing support for low-income consumers' buying optional services at regular rates.¹²⁶⁶ Some commenters suggest providing universal service support for Internet access for low-income consumers.¹²⁶⁷ Brite advocates universal service support for information services (news via satellite to community distribution sites and to individual consumers via mobile phones), speech activation (voice recognizing services to complement DTMF services), and two-way paging and short-text messaging.¹²⁶⁸ In addition, some commenters address which services should be supported for low-income individuals in their general discussion of what services should receive universal service support.¹²⁶⁹ Such comments are addressed in Part IV of the Recommended Decision.

378. Commenters assert that all consumers should receive adequate information about low-income assistance programs.¹²⁷⁰ Many suggest requiring carriers to provide consumer awareness information describing the programs that are implemented.¹²⁷¹ La Raza states that the Commission should require carriers to develop marketing plans directed at low-income and multi-lingual communities and to provide multi-lingual information regarding

¹²⁶⁴ See, e.g., Edgemont comments at 16; Ohio Consumers' Council comments at 16-17; PacTel comments at 22.

¹²⁶⁵ See, e.g., Edgemont comments at 17.

¹²⁶⁶ Texas OPUC comments at 17.

¹²⁶⁷ See, e.g., Bar of New York comments at 9-14; Edgemont comments at 13-15; Kinko's comments at 5-10.

¹²⁶⁸ Brite comments at 1-2.

¹²⁶⁹ See, e.g., Matanuska Tel. Ass'n comments at 2; PULP comments at 11-17; West Virginia Consumer Advocate comments at 6.

¹²⁷⁰ See, e.g., La Raza comments at 6-7; Virginia CC comments at 4; Ohio Consumers' Council reply comments at 16.

¹²⁷¹ See, e.g., Catholic Conference comments at 22; NASUCA comments at 6; Ohio Consumers' Council reply comments at 16.

billing and the availability and rates of services.¹²⁷²

3. Discussion

379. As we have observed, Congress in section 254(b) instructs the Joint Board and the Commission to base policies for the preservation and advancement of universal service on the principle that universal service should be available for low-income individuals in all regions of the nation.¹²⁷³ At the same time, however, Congress included section 254(j), which provides that "[n]othing in [section 254] shall affect the collection, distribution, or administration of the Lifeline Assistance Program provided for by the Commission."¹²⁷⁴

380. We find that the provisions of section 254(j) can be reconciled with other sections of 254 regarding competitive neutrality and support for low-income consumers in all regions of the nation. As an initial matter, we believe that Congress did not intend for section 254(j) to codify the existing Lifeline program. Had Congress intended for section 254(j) to have that effect, it would have chosen clearer, less equivocal language. Instead, Congress simply provided that nothing *in section 254* should affect the collection, distribution, or administration of the program.¹²⁷⁵ We therefore conclude that Congress intended, in section 254(j), to give the Joint Board and the Commission *permission* to leave the Lifeline program in place without modification, despite its inconsistencies with other provisions of section 254 and the 1996 Act generally.

381. We further conclude that a necessary corollary to this interpretation of section 254(j) is that this Joint Board has the authority to recommend, and the Commission has the authority to adopt, changes to the Lifeline program to make it more consistent with

¹²⁷² La Raza reply comments at 4-5. See also Public Advocates comments at 6.

¹²⁷³ 47 U.S.C. § 254(b)(3). We also find that the principle of affordable rates in section 254(b)(1) is relevant to our policies with respect to low-income consumers.

¹²⁷⁴ 47 U.S.C. § 254(j).

¹²⁷⁵ The Commission established the Lifeline program in 1985 pursuant to its authority under Titles I and II of the 1934 Act, as amended. See *MTS and WATS Market Structure; Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, Decision and Order, 50 Fed. Reg. 939 (1985). See also *MTS and WATS Market Structure; Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, 51 Fed. Reg. 1371 (1986). Congress did not restrict the Commission's authority in this area in the 1996 Act. We therefore conclude that the Commission possesses the authority, separate from section 254, to modify the Lifeline program. See *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 114 S. Ct. 1023, 1030 (1994), citing *Lorillard v. Pons*, 434 U.S. 575, 580 (1978) (Congress is presumed to be aware of an administrative or judicial interpretation of a statute). See also *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 184 (1988) (Congress is presumed to know the existing law pertinent to the legislation it enacts). This also bolsters our conclusion that Congress would have chosen stronger language in section 254(j) had it intended to codify the Lifeline program.

Congress's mandates in section 254 if such changes would serve the public interest. We arrive at this conclusion in part because the existing Lifeline program is supported solely by IXC's and is unavailable to low-income consumers in areas where the incumbent LEC or the state regulatory authorities have chosen not to participate.¹²⁷⁶ Given these circumstances, we find that the current Lifeline program is inconsistent with sections 254(b)(3) and (4).

382. We find no statutory basis to recommend continuing to fund the federal Lifeline program in a manner that places some IXC's at a competitive disadvantage, or that provides no support for low-income consumers in several portions of the nation. We conclude that our recommendations would make universal service support mechanisms for low-income individuals more consistent with Congress's express goals without fundamentally changing the basic nature of the existing Lifeline program. Moreover, this approach is consistent with Congress's expression of approval for the current Lifeline program in section 254(j).

383. The Joint Board agrees with the vast majority of commenters and recommends that, through universal service support mechanisms, low-income consumers should have access to the same services designated for support for rural, insular, and high cost areas.¹²⁷⁷ Our recommendation is based, in part, on the statutory principle that access to services should be available to "[c]onsumers in all regions of the Nation, including low-income consumers."¹²⁷⁸ We find that the overarching universal service goals may not be accomplished if low-income universal service support is provided for services inferior to those supported for other subscribers. We further recommend that the services listed above should be made part of the modified Lifeline Assistance program that we recommend adopting in section VIII. C., *infra*. Thus, low-income consumers eligible for Lifeline Assistance would receive, at a minimum, the designated services.

384. In the NPRM, the Commission also sought comment on providing universal service support for toll-limitation services in light of studies demonstrating that a primary reason subscribers lose access to telecommunications services is failure to pay long distance bills.¹²⁷⁹ Many commenters support toll-limitation services for low-income individuals.¹²⁸⁰ In

¹²⁷⁶ The states without Lifeline programs are: Delaware; Indiana; Iowa; Kansas; Kentucky; Louisiana; Nebraska; New Hampshire; New Jersey; and Puerto Rico.

¹²⁷⁷ For a discussion of the services designated for support, *see supra* section IV.

¹²⁷⁸ 47 U.S.C. § 254(b)(3).

¹²⁷⁹ NPRM at para. 54 (*citing Subscribership Notice* at 13005-06).

¹²⁸⁰ *See, e.g.*, Florida PSC comments at 15-16; California PUC comments at 15; Indiana URC comments at 3-4; Illinois CC comments at 5; Bell Atlantic comments at 15.

a number of jurisdictions, however, it appears that voluntary toll-limitation services may not be affordable for low-income consumers. The Joint Board recommends that the Lifeline Assistance program for eligible low-income consumers include voluntary toll limitation, in addition to the services mentioned above. Because voluntary toll blocking allows customers to block toll calls, and toll control allows customers to specify in advance a certain amount of toll usage per month or billing cycle, these services assist customers in avoiding involuntary termination of their access to telecommunications services. Therefore, we find that providing voluntary toll limitation free of charge to low-income consumers should help increase subscribership among low-income consumers. Furthermore, we find that toll-limitation services are "essential to education, public health or public safety"¹²⁸¹ and "consistent with the public interest, convenience, and necessity"¹²⁸² in that they maximize the opportunity of customers to remain on the telecommunications network.

385. We recommend, however, that only carriers that currently possess the capability of providing these services be required to provide them to Lifeline-eligible consumers and receive universal service support for such services. We understand that most carriers are currently capable of providing toll-blocking service,¹²⁸³ and that some carriers are capable of providing toll control.¹²⁸⁴ Eligible telecommunications carriers that are technically incapable of providing any toll-limitation services should not be required to provide either service, and such an incapability should not affect their designation as eligible telecommunications carriers. We recommend, however, that eligible telecommunications carriers not currently capable of providing these services be required to add the capability to provide at least toll blocking in any switch upgrades (but we do not recommend that universal service support be provided for such switch upgrades). We further recommend that carriers offering voluntary toll-limitation services receive support based on the incremental cost of providing those services.

386. We do not recommend, as some commenters suggest,¹²⁸⁵ providing support for toll-limitation services for consumers other than low-income consumers. We find that subscribership levels among low-income consumers are well below the national average and that a principal reason for service termination is the failure to pay toll charges. Therefore, we conclude that toll-limitation services should be supported only for low-income consumers at

¹²⁸¹ 47 U.S.C. § 254(c)(1)(A).

¹²⁸² 47 U.S.C. § 254(c)(1)(D).

¹²⁸³ Some of the carriers offering toll blocking include: Ameritech, Bell Atlantic, BellSouth, GTE, NYNEX, Pacific Telesis Group, and Southwestern Bell Telephone Company.

¹²⁸⁴ The following are some of the carriers offering toll control: Bell Atlantic - Pennsylvania; Denver and Ephrata Telephone and Telegraph Company; Southwestern Bell Telephone Company; and Pacific Telesis Group.

¹²⁸⁵ See, e.g., Alaska PUC comments at 2, 6; Benton comments at 2-3; Indiana URC comments at 2-4.